



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUN 27 2007**

Ralph J. Caccia, Esq.  
Powell Goldstein LLP  
Third Floor-901 New York Avenue, N.W.  
Washington, DC 20001-4413

Re: MUR 5866  
Conrad Burns  
Friends of Conrad Burns -2006 and  
James Swain, in his official capacity as  
treasurer

Dear Mr. Caccia:

On November 3, 2006, the Federal Election Commission ("Commission") notified your clients, Conrad Burns and Friends of Conrad Burns -2006 and James Swain, in his official capacity as treasurer ("the Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On June 20, 2007, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Conrad Burns and the Committee violated 2 U.S.C. § 441f. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan  
General Counsel

A handwritten signature in cursive script, reading "Susan L. Lebeaux".

BY: Susan L. Lebeaux  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** Friends of Conrad Burns - 2006 and MUR 5866  
5 James Swain,  
6 in his official capacity as treasurer  
7 Conrad Burns  
8

9 **I. INTRODUCTION**

10  
11 This matter involves allegations that Senator Conrad Burns earmarked taxpayer funds to the  
12 Inland Northwest Space Alliance ("INSA") with the understanding that INSA employees would  
13 make contributions to his campaign, and that INSA pressured its employees to make such  
14 contributions. As support, the complaint relies on a newspaper article that quotes an anonymous  
15 source stating that he was aware that INSA employees were pressured to give money to Burns' re-  
16 election campaign. Conrad Burns and his campaign committee, Friends of Conrad Burns - 2006  
17 ("the Committee") and James Swain, in his official capacity as treasurer ("Respondents") deny these  
18 allegations in response to the complaint. As discussed more fully below, because there is  
19 insufficient information upon which to initiate an investigation, the Commission found no reason to  
20 believe that Respondents violated 2 U.S.C. § 441f and closed the file.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 **A. Facts**  
23

24 During his last term in office, Senator Conrad Burns earmarked through line item  
25 appropriations in various omnibus spending bills a total of \$3.3 million to the Northern Rockies  
26 Consortium for Space Privatization ("NRCSP"), a space research center established by the  
27 University of Montana. *See* Matt Gouras, *Lawmakers look at probe into UM's Space Center*,  
28 *Billings Gazette*, June 20, 2006. In 2003, the University of Montana created INSA, which was

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1 originally formed as a private, for-profit corporation, to be the primary sub-contractor for the  
2 NRCSP grant.<sup>1</sup> *See* Betsey Cohen and Jennifer McKee, *Firm with Burns ties landed no-bid*  
3 *contract*, Missoulian, May 28, 2006. In 2004, INSA converted into a nonprofit corporation. *Id.*

4 The complaint attaches an October 24, 2006 article featured in the Missoulian entitled  
5 “*Review unearths more problems at UM space program.*” *See* Attachment to the complaint.

6 According to that article, the Chairman of INSA’s board of directors commissioned a review by a  
7 Montana-based accounting firm with expertise in government contracts. That review, among other  
8 things, reportedly raised concerns that INSA may have used federal funds for lobbying, a violation  
9 of federal law. The article references an “unnamed” source—identified as “a former top  
10 administrator for INSA who was stationed in Washington D.C., in 2004 and 2005”—who reportedly  
11 stated that Leo Giacometto, Burns’ former chief-of-staff, had lobbied on behalf of INSA.<sup>2</sup> In further  
12 discussing INSA’s close relationship with Burns, the source is quoted as stating:

13 I was always told, and it was talked about freely among INSA employees,  
14 that everyone at INSA owed allegiance to Conrad Burns because he was  
15 funding everyone’s salaries. . . . There was great pressure on employees  
16 to give money to Burns’ re-election campaign.  
17

18 Relying on this reported quotation, the complaint alleges two potential FECA violations.  
19 First, it alleges that because “Sen. Conrad Burns was apparently directing taxpayer funds to INSA  
20 with the explicit or tacit understanding that employees of the firm would be campaign contributors,”

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<sup>1</sup> According to Dun and Bradstreet, INSA became incorporated in the State of Montana on February 28, 2003.

<sup>2</sup> According to press accounts, INSA paid hundreds of thousands of dollars in no-bid contracts to two companies affiliated with Giacometto: Compressus, a software company (at one time he was Vice-President and head of its lobbying department); and Gage, a lobbying company of which he is the founding partner. *See* Jennifer McKee, Betsy Cohen, *UM company spent cash on business tied to Burns*, Billings Gazette, May 28, 2006. Giacometto and other associates at Gage made contributions to Burns’ campaign committee, and Burns is currently employed there. However, there is no information implicating Giacometto or Gage in a reimbursement scheme involving contributions to Burns from INSA employees.

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1 this activity “violates the prohibition against providing money to others to effect political  
2 contributions.” *See* 2 U.S.C. § 441f. Second, the complaint alleges that because “[e]mployees of  
3 INSA were being pressured by their employers to contribute to Burns with the specter of their jobs  
4 hanging over their heads,” this activity “violates the FEC prohibition of making corporate  
5 contributions and making contributions in the name of another.” *See* 2 U.S.C. §§ 441b and 441f.

6 **B. Analysis**

7 The Federal Election Campaign Act of 1971, as amended, provides that no person shall  
8 make a contribution in the name of another person or knowingly permit his or her name to be used  
9 to effect such a contribution, and that no person shall knowingly accept a contribution made by one  
10 person in the name of another person. *See* 2 U.S.C. § 441f. This prohibition extends to persons  
11 who knowingly help or assist in making such contributions. *See* 11 C.F.R. § 110.4(b)(1)(iii).

12 The complaint, though not entirely clear, refers to an “illegal reimbursement scheme” and  
13 theorizes that a section 441f scheme may have occurred through Burns’ earmarking of funds to  
14 INSA, with the understanding that INSA employees would use these funds, in part, to contribute to  
15 Burns’ campaign committee. The complaint also alleges illegal corporate contributions, based on a  
16 theory that INSA employees were coerced to contribute to Burns’ campaign under the threat of  
17 detrimental job action. *See* 11 C.F.R. § 114.2(f)(2)(iv).

18 Respondents unequivocally deny the allegations set forth in the complaint. They assert “at  
19 no time did Senator Burns or the Committee know of any alleged ‘pressure’ on employees to make  
20 contributions.” Burns Respondents’ Response at 2. Further, they state “Senator Burns never  
21 directed federal funds to INSA because of or ‘to effect’ campaign contributions from INSA  
22 employees.” *Id.*

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1 On balance, the complaint's section 441f theory is tenuous. It contains no first-hand  
2 information and does not identify any contributors who gave contributions to Burns' campaign that  
3 may have been reimbursed. Rather, it speculates that a reimbursement scheme occurred based  
4 solely on an unidentified former INSA employee's reported statements that "everyone at INSA  
5 owed allegiance to Conrad Burns because he was funding everyone's salary," and "[t]here was great  
6 pressure on [INSA] employees to give money to Burns' re-election campaign." However, the  
7 quoted statements do not assert that INSA employees actually made such contributions, or if they  
8 did, that they were reimbursed, or that the funds they used to make contributions were not wholly  
9 their own to use as they so chose. We have found no public information suggesting that INSA  
10 employees used anything other their own personal funds to make the contributions, and the fact that  
11 government funding may have helped provide for their salaries, which they later used to make the  
12 contributions, does not mean that the salaries paid were not the personal funds of the employees.

13 The complaint's corporate facilitation theory is also unconvincing. It does not provide any  
14 support for corporate facilitation through coercion other than the aforementioned article, which does  
15 not identify the source or any other sources that may be able to explain if, or how, INSA employees  
16 were allegedly "pressured" to contribute to the Committee. In short, the corporate facilitation theory  
17 rests wholly on speculation.

18 Indeed, the available public information does not corroborate either theory. Both theories  
19 depend on INSA employees contributing to Burns' campaign. The FEC disclosure database,  
20 however, reveals only a small number of INSA employees or possible employees that made  
21 contributions to the Committee. These contributions, which were made on various dates between  
22 2003-2006, and were made by one employee and four executives, were not especially large, and

1 except for INSA's Executive Director, none of these individuals contributed to Burns more than  
2 once.<sup>3</sup>

3 What we are left with is an unnamed source who reportedly spoke of unspecified "pressure"  
4 on INSA employees to contribute to Burns' campaign.<sup>4</sup> As noted, there were very few contributions  
5 from INSA employees to Burns during the three-year period in which he earmarked funds to INSA.  
6 Further, the specific and unequivocal denials of the Respondents,' while unsworn and conclusory,  
7 sufficiently rebut the speculative complaint. The Commission has stated that "unwarranted legal  
8 conclusions from asserted facts or mere speculation will not be accepted as true," and "[s]uch purely  
9 speculative charges, especially when accompanied by a direct refutation, do not form an adequate  
10 basis to find reason to believe that a violation of the FECA has occurred." Statement of Reasons,  
11 MUR 4960 (Hillary Rodham Clinton for Senate Exploratory Committee, issued December 21,  
12 2000) (citations omitted). Accordingly, there is insufficient evidence to initiate an investigation in  
13 this matter.

14 Therefore, there is no reason to believe that Conrad Burns and Friends of Conrad Burns -  
15 2006 and James Swain, in his official capacity as treasurer, violated 2 U.S.C. § 441f.

<sup>3</sup> The Committee's FEC disclosure reports show only one contribution from an INSA employee, a September 30, 2005 contribution in the amount of \$500 from Michael Britzius. Nevertheless, because we could not rule out other contributions, given that the Committee's amended reports did not disclose complete contributor information and the complaint did not identify any specific contributions, we researched publicly available sources and found the names of approximately 20 INSA employees or possible employees. Our cross-reference of these names with the FEC's donor database turned up contributions from the following INSA directors or executives: George Bailey, whose employer information on the Committee's reports is listed as the "University of Montana," was simultaneously the Executive Director and President of INSA at the time that he made five contributions to the Committee totaling \$3,150 from 2003 through 2005; INSA Board Chairman Milt Datsopoulos, whose law firm is listed in the employer information on the Committee's reports, made a \$250 contribution on April 25, 2005; Keely Burns, daughter of Conrad Burns who reportedly attended only one organizational board meeting, made the lone 2006 contribution in the amount of \$500 on October 18<sup>th</sup>; and then INSA business manager Rollene "Lucy" Chesnut (spelled "Chasnut" on the Committee's reports with no employer information), who made a \$250 contribution on September 23, 2004.

<sup>4</sup> We have been unable to identify this source through publicly available information.

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